



This document is scheduled to be published in the Federal Register on 10/01/2019 and available online at <https://federalregister.gov/d/2019-21188>, and on [govinfo.gov](https://www.govinfo.gov)

Billing Code 9111-14

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Notice of determination.

SUMMARY: The Acting Secretary of Homeland Security has determined, pursuant to law, that it is necessary to waive certain laws, regulations, and other legal requirements in order to ensure the expeditious construction of barriers and roads in the vicinity of the international land border in Cameron County, Texas and Hidalgo County, Texas.

DATES: This determination takes effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

SUPPLEMENTARY INFORMATION:

Important missions of the Department of Homeland Security (“DHS”) include border security and the detection and prevention of illegal entry into the United States. Border security is critical to the nation’s national security. Recognizing the critical importance of border security, Congress has mandated DHS to achieve and maintain operational control of the international land border. Secure Fence Act of 2006, Public Law 109-367, § 2, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1701 note). Congress defined “operational control” as the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband. Id. Consistent with that mandate from Congress, the President’s Executive Order on Border Security and Immigration

Enforcement Improvements directed executive departments and agencies to deploy all lawful means to secure the southern border. Executive Order 13767, § 1. In order to achieve that end, the President directed, among other things, that I take immediate steps to prevent all unlawful entries into the United States, including the immediate construction of physical infrastructure to prevent illegal entry. Executive Order 13767, § 4(a).

Congress has provided to the Secretary of Homeland Security a number of authorities necessary to carry out DHS's border security mission. One of those authorities is section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as amended ("IIRIRA"). Public Law 104-208, Div. C, 110 Stat. 3009-546, 3009-554 (Sept. 30, 1996) (8 U.S.C. § 1103 note), as amended by the REAL ID Act of 2005, Public Law 109-13, Div. B, 119 Stat. 231, 302, 306 (May 11, 2005) (8 U.S.C. § 1103 note), as amended by the Secure Fence Act of 2006, Public Law 109-367, § 3, 120 Stat. 2638 (Oct. 26, 2006) (8 U.S.C. § 1103 note), as amended by the Department of Homeland Security Appropriations Act, 2008, Public Law 110-161, Div. E, Title V, § 564, 121 Stat. 2090 (Dec. 26, 2007). In section 102(a) of IIRIRA, Congress provided that the Secretary of Homeland Security shall take such actions as may be necessary to install additional physical barriers and roads (including the removal of obstacles to detection of illegal entrants) in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry into the United States. In section 102(b) of IIRIRA, Congress mandated the installation of additional fencing, barriers, roads, lighting, cameras, and sensors on the southwest border. Finally, in section 102(c) of IIRIRA, Congress granted to the Secretary of Homeland Security the authority to waive all legal requirements that I, in my sole discretion, determine necessary to ensure the expeditious construction of barriers and roads authorized by section 102 of IIRIRA.

DETERMINATION AND WAIVER:

Section 1

The United States Border Patrol's (Border Patrol) Rio Grande Valley Sector is an area of high illegal entry. Between October 1, 2018, and August 31, 2019, the Border Patrol apprehended over 325,000 illegal aliens attempting to enter the United States between border crossings in the Rio Grande Valley Sector. In that same time period, the Border Patrol had over 900 separate drug-related events between border crossings in the Rio Grande Valley Sector, through which it seized over 112,000 pounds of marijuana, over 2,300 pounds of cocaine, over 90 pounds of heroin, and over 1,600 pounds of methamphetamine.

Owing to the high levels of illegal entry within the Rio Grande Valley Sector, I must use my authority under section 102 of IIRIRA to install additional physical barriers and roads in the Rio Grande Valley Sector. Therefore, DHS will construct roads and mechanical gates within gaps of existing barriers in the vicinity of the United States border in the Rio Grande Valley Sector. The areas in the vicinity of the border within which such construction will occur are more specifically described in Section 2 below. Such areas are not located within any of the areas identified in sections 231 and 232(c) of title II of division A of the Fiscal Year 2019 DHS Appropriations Act. *See* Public Law 116-6, Div. A, Title II, §§ 231-232.

Section 2

I determine that the following areas in the vicinity of the United States border, located in the State of Texas within the Border Patrol's Rio Grande Valley Sector, are areas of high illegal entry (the "project areas"):

- In Cameron County, starting approximately one-tenth (0.1) of a mile west of a gap in the existing barrier commonly referred to as the Sabal Palm gate location,

which is situated approximately one-half (0.5) of a mile south of the intersection of Sabal Palm Grove Road and Southmost Road, and extending to approximately one-tenth (0.1) of a mile northeast of the Sabal Palm Gate location.

- In Cameron County, starting approximately one-tenth (0.1) of a mile west of a gap in the existing barrier commonly referred to as the Landrums gate location, which is situated approximately two-tenths (0.2) of a mile southeast of the intersection of Military Highway and South Sam Houston Boulevard, and extending to approximately one-tenth (0.1) of a mile east of the Landrums gate location.
- In Cameron County, starting approximately one-tenth (0.1) of a mile north of a gap in the existing barrier commonly referred to as the Rio Grande Avenue gate location, which is situated immediately east of the intersection of Rio Grande Avenue and Robertson Road, and extending to approximately one-tenth (0.1) of a mile south of the Rio Grande Avenue gate location.
- In Cameron County, starting approximately one-tenth (0.1) of a mile west of a gap in the existing barrier, commonly referred to as the Robertson Road gate location, which is situated immediately north of the intersection of Robertson Road and Rio Grande Avenue, and extending to approximately one-tenth (0.1) of a mile east of the Robertson Road gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the 263 Road gate location, which is situated on the International Boundary Water Commission (“IBWC”) levee approximately one-quarter (0.25) of a mile southwest of the intersection of

Military Road and Domingo Trevino Drive, and extending to approximately one-tenth (0.1) of a mile southeast of the 263 Road gate location.

- In Hidalgo County, starting approximately one-tenth (0.1) of a mile north of a gap in the existing levee wall commonly referred to as the Strawberry Farms gate location, which is situated on the IBWC levee approximately four-tenths (0.4) of a mile southwest of the intersection of Villarre Crispin Street and Military Road, and extending to approximately eight-tenths (0.8) of a mile southeast of the Strawberry Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Hoki's gate location, which is situated on the IBWC levee approximately nine-tenths (0.9) of a mile southeast of the intersection of Chihuahua Road and Military Road, and extending to approximately one-tenth (0.1) of a mile southeast of the Hoki's gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Metz Farms gate location, which is situated on the IBWC levee approximately six-hundredths (.06) of a mile southeast of the intersection of Chihuahua Road and Military Road, and extending to approximately one-tenth (0.1) of a mile southeast of the Metz Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile west of the gap in the existing levee wall, commonly referred to as the Mudhole Road gate location, which is located on the IBWC levee approximately one-tenth (0.1) of a mile southeast of the intersection of Manuelita Rios Road and Farm to Market

Road 1427, and extending to approximately one-tenth (0.1) of a mile east of the Mudhole Road gate location.

- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Boat Ramp Gate (Cistern) gate location, which is situated four-tenths (0.4) of a mile northwest of the intersection of County Road 1598 and the IBWC levee, and extending to approximately one-half (0.5) of mile southeast of the Boat Ramp Gate (Cistern) gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the Fuller gate location, which is situated at the intersection County Road 1598 and the IBWC levee, and extending to approximately six-tenths (0.6) of a mile east of the Fuller gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile north of a gap in the existing levee wall commonly referred to as the Basin Ramp (PGR) gate location, which is situated approximately one-tenth (0.1) of a mile southwest of where Desiga Way terminates at Progreso Settling Basin, and extending to approximately one-tenth (0.1) of a mile south of the Basin Ramp (PGR) gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the Progreso Pump gate location, which is situated approximately two-tenths (0.2) of mile southwest of the intersection of Moon Lake Drive South and the IBWC levee, and extending to

approximately one-tenth (0.1) of a mile northeast of the Progreso Pump gate location.

- In Hidalgo County, starting approximately two-tenths (0.2) of a mile west of a gap in the existing levee wall commonly referred to as the Octavio Garcia Ramp gate location, which is situated three-hundredths (0.03) of a mile east of the intersection of County Road 793 and County Road 1702, and extending to approximately one-tenth (0.1) of a mile east of the Octavio Garcia Ramp gate location.
- In Hidalgo County, starting approximately seven-tenths (0.7) of a mile west of a gap in the existing levee wall commonly referred to as the Beckwith Ramp gate location, which is situated at the intersection of County Road 793 and County Road 1706, and extending to approximately one-tenth of a mile east of the Beckwith Ramp gate location.
- In Hidalgo County, starting approximately one-half (0.5) of a mile west of a gap in the existing levee wall commonly referred to as the Swamp Refuge gate location, which is situated approximately four-tenths (0.4) of a mile east of the intersection of County Road 793 and County Road 1706, and extending to approximately one-tenth (0.1) of a mile east of the Swamp Refuge gate location.
- In Hidalgo County, starting approximately six-tenths (0.6) of a mile northwest of a gap in the existing levee wall commonly referred to as the Fuller Ramp gate location, which is situated approximately one (1) mile east of the intersection of County Road 793 and County Road 1706, and extending to approximately one-tenth (0.1) of a mile southeast of the Fuller Ramp gate location.

- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the East of Hidalgo Port of Entry gate location, located approximately two-tenths (0.2) of a mile southwest of the intersection of International Boulevard and South Bridge Street, and extending to approximately one-tenth (0.1) of a mile northeast of the East of Hidalgo Port of Entry gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of a gap in the existing levee wall commonly referred to as the Bell Brothers Road gate location, which is situated at the intersection of Cantu Trail Road and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile southeast of the Bell Brothers Road gate location.
- In Hidalgo County, starting approximately six-tenths (0.6) of a mile southwest of a gap in the existing levee wall commonly referred to as the McManus Farms gate location, which is situated at the intersection of County Road 1582 and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile southeast of the McManus Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the American Farms gate location, which is situated at the intersection of County Road 1594 and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile northeast of the American Farms gate location.
- In Hidalgo County, starting approximately one-tenth (0.1) of a mile southwest of a gap in the existing levee wall commonly referred to as the Munoz gate location,

which is situated approximately two-tenths (0.2) of a mile northeast of the intersection of County Road 1594 and the IBWC levee, and extending to approximately one-tenth (0.1) of a mile northeast of the Munoz gate location.

- In Hidalgo County, starting approximately one-tenth (0.1) of a mile northwest of the Penitas Pump House on the IBWC levee and extending in a southeasterly direction for approximately one-quarter (0.25) of a mile to a point on the IBWC levee.

There is presently an acute and immediate need to construct physical barriers and roads in the vicinity of the border of the United States in order to prevent unlawful entries into the United States in the project areas pursuant to sections 102(a) and 102(b) of IIRIRA. In order to ensure the expeditious construction of the barriers and roads in the project areas, I have determined that it is necessary that I exercise the authority that is vested in me by section 102(c) of IIRIRA.

Accordingly, pursuant to section 102(c) of IIRIRA, I hereby waive in their entirety, with respect to the construction of roads and physical barriers (including, but not limited to, accessing the project areas, creating and using staging areas, the conduct of earthwork, excavation, fill, and site preparation, and installation and upkeep of physical barriers, roads, supporting elements, drainage, erosion controls, safety features, lighting, cameras, and sensors) in the project areas, all of the following statutes, including all federal, state, or other laws, regulations, and legal requirements of, deriving from, or related to the subject of, the following statutes, as amended: The National Environmental Policy Act (Pub. L. 91-190, 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 et seq.)); the Endangered Species Act (Pub. L. 93-205, 87 Stat. 884 (Dec. 28, 1973) (16 U.S.C. 1531 et seq.)); the Federal Water Pollution Control Act (commonly referred to as the

Clean Water Act (33 U.S.C. 1251 et seq.)); the National Historic Preservation Act (Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966), as amended, repealed, or replaced by Pub. L. 113-287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 470 et seq., now codified at 54 U.S.C. 100101 note and 54 U.S.C. 300101 et seq.)); the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.); the Migratory Bird Conservation Act (16 U.S.C. 715 et seq.); the Clean Air Act (42 U.S.C. 7401 et seq.); the Archeological Resources Protection Act (Pub. L. 96-95, 93 Stat. 721 (Oct. 31, 1979) (16 U.S.C. 470aa et seq.)); the Paleontological Resources Preservation Act (16 U.S.C. 470aaa et seq.); the Federal Cave Resources Protection Act of 1988 (16 U.S.C. 4301 et seq.); the Safe Drinking Water Act (42 U.S.C. 300f et seq.); the Noise Control Act (42 U.S.C. 4901 et seq.); the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (42 U.S.C. 6901 et seq.); the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601 et seq.); the Archaeological and Historic Preservation Act (Pub. L. 86-523, 74 Stat. 220 (June 27, 1960) as amended, repealed, or replaced by Pub. L. 113-287, 128 Stat. 3094 (Dec. 19, 2014) (formerly codified at 16 U.S.C. 469 et seq., now codified at 54 U.S.C. 312502 et seq.)); the Antiquities Act (formerly codified at 16 U.S.C. 431 et seq., now codified 54 U.S.C. 320301 et seq.); the Historic Sites, Buildings, and Antiquities Act (formerly codified at 16 U.S.C. 461 et seq., now codified at 54 U.S.C. 3201-320303 & 320101-320106); the Farmland Protection Policy Act (7 U.S.C. 4201 et seq.); the Federal Land Policy and Management Act (Pub L. 94-579, 90 Stat. 2743 (Oct. 21, 1976) (43 U.S.C. 1701 et seq.)); the National Wildlife Refuge System Administration Act (Pub. L. 89-669, 80 Stat. 926 (Oct. 15, 1966) (16 U.S.C. 668dd-668ee)); National Fish and Wildlife Act of 1956 (Pub. L. 84-1024, 70 Stat. 1119 (Aug. 8, 1956) (16 U.S.C. 742a, et seq.)); the Fish and Wildlife Coordination Act (Pub. L. 73-121, 48 Stat. 401 (March 10, 1934) (16 U.S.C. 661 et seq.)); the National Trails System Act (16 U.S.C.

1241 et seq.); the Administrative Procedure Act (5 U.S.C. 551 et seq.); the Rivers and Harbors Act of 1899 (33 U.S.C. 403); the Coastal Zone Management Act (Pub. L. 92–583 (16 U.S.C. 1451 et seq.)); the Eagle Protection Act (16 U.S.C. 668 et seq.); the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); and the American Indian Religious Freedom Act (42 U.S.C. 1996).

This waiver does not revoke or supersede the previous waivers published in the Federal Register on April 8, 2008, (73 FR 19077 and 73 FR 19078) and October 11, 2018, (83 FR 51472), which shall remain in full force and effect in accordance with their respective terms. I reserve the authority to execute further waivers from time to time as I may determine to be necessary under section 102 of IIRIRA.

Kevin K. McAleenan,
Acting Secretary of Homeland Security
[FR Doc. 2019-21188 Filed: 9/30/2019 8:45 am; Publication Date: 10/1/2019]